

04 CV 3457

BMS

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

83

United States District Court

District

Eastern District of Pennsylvania

Name of Movant

Prisoner's No.

Docket No.

Derrick Williams

48426-046

94-462

Place of Confinement

U.S.P Leavenworth, P.O. Box 1000, Leavenworth, KS, 66648

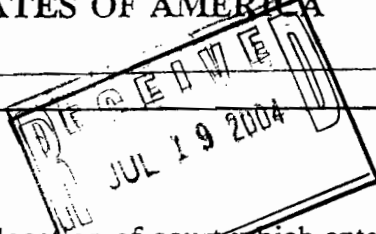
(Include name upon which convicted)

UNITED STATES OF AMERICA

V

Derrick Williams AKA Derrick Everett

(Full name of movant)



MOTION

1. Name and location of court which entered the judgment of conviction under attack United States District Court for the Court Eastern Pennsylvania
2. Date of judgement of conviction Dec. 6, 1996
3. Length of sentence 22 1/2
4. Nature of offense involved (all counts) 21 U.S.C. § 841, 18 U.S.C. § 922(g) and 18 U.S.C. § 924(c)
5. What was your plea? (Check one)
 - (a) Not guilty ☐
 - (b) Guilty ☒
 - (c) Nolo contendere ☐
6. Kind of trial: (Check one)
 - (a) Jury ☐
 - (b) Judge only ☒
7. Did you testify at trial?
 - Yes ☒ No ☐
8. Did you appeal from the judgment of conviction?
 - Yes ☒ No ☐

FILED

JUL 21 2004

MICHAEL E. RUZZA, Clerk

By _____ Dep. Clerk

9. If you did appeal, answer the following:

- (a) Name of court Third Circuit Court of Appeals
 (b) Result Anders Brief was granted filed by attorney and the petitioner
 (c) Date of Result June 11, 1998

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgement in any federal court?
 Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court United States District Court for Eastern District of Pennsylvania
 (2) Nature of proceedings § 2255

(3) Grounds raised Ineffective assistance of counsel, selective prosecution, sixth and fifth amendment violation do to the petitioner's process, constitutionality of guidelines and Commerce (jurisdiction of court)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Court rejected non Apprendi claims as time barred, and rejected motion Apprendi claim on its merits

(6) Date of result Sept 19, 2000

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court Third Circuit Court of Appeals

(2) Nature of proceeding Certificate of Appealability

(3) Grounds raised Denial of petitioner's § 2255 motion as time barred, and error on the part of the District Court in miscalculating the date that petitioner filed his § 2255 which was timely.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Denied for failure to make a substantial showing
 (6) Date of Result Mo. 9, 2001

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court United States Supreme Court

(2) Nature of proceeding Writ of Habeas

(3) Grounds raised Same as previous motions

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Denied April 19, 2002 reh. den June 24, 2002

(6) Date of Result Same

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(3) Third petition, etc. Yes ☒ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this matter, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for relief. You may raise any ground which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

~~Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.~~

Ground one

The court to allow him to withdraw his guilty plea. The court refused. Stating that even though the petitioner could not be convicted and sentenced for "use". He could be convicted and sentence for "carry". Under the recent Supreme Court decision in *Blakely*. The court stated "the petitioner entered a guilty plea admitting the elements of second degree kidnapping and domestic violence, and firearm allegations but no other relevant facts. This made clear that Blakely that could only be sentence to what he admitted to in the guilty plea, and nothing else. Unless that something else was determined by a jury. The court cannot remedy a situation where a defendant pleads to conduct that constituted what he and the court believed to be elements in a offense. Then once those elements are redefined no longer fitting the plea of the defendant. Then turn around and say that he is still subjected to be sentenced and convicted for a different element. The defendant does not receive any procedural safeguards behind such a remedy, and such determination must be decided by a jury. Even though 924(c) acts as a statute, in the 924 penalty section. It is still governed by the rules that require sixth amendment protections before it's punishment of 5 years to any other offense can consecutively, can be imposed.

Ground Two

decision in *Blakely*. It had held in part II, "an accusation within looks any particular fact which the law makes essential to the punishment is... no accusation within the requirements of the common law, and it is no accusation in reason." 15 Bishop Criminal Procedure § 87, p. 55 (2d ed. 1872) These principles have been acknowledged by the courts and treatises since the earliest days of graduated sentencing, we compiled the relevant authorities in Appendix, see 530 U.S. at 476-483, 489, 490 n. 15, id. at 501-518 (Thomas J., concurring) and need not repeat them here. The statement makes clear that unlike the argument put forth by Almendarez-Torres and the standard of proof that might apply to sentencing determinations that bear significantly on the severity of the sentence. An issue that was not before the Court in that case. The petitioner states that his sentence was enhanced beyond the maximum range to which he could receive under the guidelines pursuant to 4B1.1. Facts that the petitioner did not plead to and were not found by a jury in order for the petitioner to receive a increase beyond maximum punishment allowed. The Supreme Court in Appendix State "Both the certainty that procedural safeguards attach to any 'fact' of prior convictions and the reality that Almendarez-Torres did not challenge the accuracy of that fact in his case, mitigated the due process and sixth amendment concerns otherwise implicated in allowing a judge to determine a 'fact' increasing punishment beyond the maximum of the statutory range." Also unlike Almendarez-Torres the petitioner was enhanced under a guideline provision like the one in *Blakely*. 4B1.1 is connected to the

statute. The petitioner indictment stated that the petitioner was in violation of 21 U.S.C. § 841 in three different incidents. Yet the indictment only stated the charged conduct and not the penalty. Thus the petitioner could only receive an offense level of 30 as opposed to 34. Also unlike the statute in *Almendarez Torres* Once 4B1.1 is applied to a defendant. The defendant is then solely sentenced for career offender and not the underlying conviction for what the defendant pled guilty to or found guilty of. The petitioner receive 7 years over his sentence under the 922(g) A prima facie showing is simply a sufficient showing of possible merit to warrant a fuller exploration by the district court. The petitioner preserved these arguments in earlier petitions and he would receive a miscarriage of justice if not applied.

Ground Three
 is a conflict of interest. This caused the previous attorney to fail to make challenges to the petitioner's jurisdiction. Because the petitioner's case was adopted by U.S. Attorney's office by way of a program called F.A.S.T. from the state. See U.S. v. Berry, 164 F.3d 844. In that case. It stated that the main reason that the movant is sitting in federal court under federal prosecution. Is because the petitioner's prior criminal record could be used under Career Offender under U.S. Sentencing Guidelines § 4B1.1, and the other factor was drug amount. The petitioner during the time separate incidents stated in his indictment. Only possess a combined total of 12 plus grams. The previous attorney never challenge this before the court to see if in fact the petitioner met the amount criteria, and if he did. Then the second criteria was element of his offense that should have been taken to a jury and proved beyond a reasonable doubt. Since the petitioner is sitting in prison for a sentence under Career offender and not the underlying offense. See In re Williams 3rd Cir No. 02-2560. This shows that the movant's priors were not just some mere enhancements, but an element of his offense under a sentencing scheme that is unconstitutional. see Blakely.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntary or with understanding of the nature of the charge and the consequences of the plea.
- (b) Convictions obtained by use of coerced confession.
- (c) Convictions obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Convictions obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Convictions obtained by a violation of the protection against self-incrimination.
- (f) Convictions obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Convictions obtained by the violation of the protection against double jeopardy.
- (h) Convictions obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: 924 (c) conviction was imposed in violation of the movant's 4th and 5th amendment right.

Supporting FACTS (tell your story briefly without citing cases or law): The District Court accepted a guilty plea from the petitioner in which the petitioner admitted to the standard of "use" defined by the courts and prosecutor at the time. The petitioner after the Supreme Court ruling in *Barber v. Ash*

B. Ground two: Petitioner received enhancements of his sentence in violation of his 4th amendment.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner has stated numerous times in every pro-se petition filed to this court. That the maximum sentence that he could receive for the actual guilty plea was 120 to a 150 months in offense level 26. In the recent Supreme Court

C. Ground three: The petitioner's counsel appointed by the courts were ineffective.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner stated to the court that he was denied of right of appeal because his attorney filed an Anders brief. Stating that the petitioner had no merit issues and his previous counsel had sexual relations with the petitioner's wife which was and

D. Ground four: _____

Supporting FACTS (tell your short briefly without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgement under attack?
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgement attacked herein:

(a) At preliminary hearing Quentin Brooks

(b) At arraignment and plea Same

(c) At trial Same

(d) At sentencing Christopher Warren

(e) On appeal Same

(f) In any post-conviction proceeding Pro - Pre

(g) On appeal from any adverse ruling in a post-conviction proceeding Pro - Pre

6. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

Yes ☒ No ☐

7. Do you have any future sentences to serve after you complete the sentence imposed by the judgement under attack?

Yes ☒ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future:

Pennsylvania Commonwealth Parole Violation
24 months

(b) Give date and length of the above sentence: 24 months

(c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☒ No ☐

Therefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Derrick Williams
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on:

3/14/04
(date)

Derrick Williams
Signature of Movant

BMS

04C43457

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <i>Eastern District of Pennsylvania</i>
Name of Movant <i>Derrick Williams</i>	Prisoner's No. <i>48426-046</i>	Docket No.
Place of Confinement <i>U.S.P. Levensworth, P.O. Box 1000, Levensworth, PA, 46048</i>		
UNITED STATES OF AMERICA		(Include name upon which convicted) <i>Derrick Williams aka Derrick Everett</i> (Full name of movant)

MOTION

- Name and location of court which entered the judgment of conviction under attack *United States District Court for the Court Eastern Pennsylvania*
- Date of judgement of conviction *Dec. 6, 1996*
- Length of sentence *22 1/2*
- Nature of offense involved (all counts) *21 U.S.C. § 841, 18 U.S.C. § 922(g) and 18 U.S.C. § 924(c)*
- What was your plea? (Check one)
 - Not guilty ☐
 - Guilty ☒
 - Nolo contendere ☐
- Kind of trial: (Check one)
 - Jury ☐
 - Judge only ☒
- Did you testify at trial?
Yes ☒ No ☐
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court Third Circuit Court of Appeal
 (b) Result Andres Buel was granted filed by attorney and the petitioners
 (c) Date of Result June 11, 1998

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgement in any federal court?
 Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court United States District Court for Eastern District of Pennsylvania
 (2) Nature of proceedings § 2255

(3) Grounds raised of ineffective assistance of counsel, selective prosecution, sixth and fifth amendment violation do to the petitioners process, constitutionality of guidelines and Commerce (jurisdiction of court)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Court rejected non Apprendi claims as time barred, and rejected motion Apprendi claim on its merits
 (6) Date of result Sept 19, 2000

(b) As to any second petition, application or motion, give the same information:

- (1) Name of Court Third Circuit Court of Appeals
 (2) Nature of proceeding Certificate of Appealability

(3) Grounds raised Denial of petitioner's § 2255 motion as time barred, and error on the part of the District Court in miscalculating the date that petitioner filed his § 2255 which is as timely.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Denied for failure to make a substantial showing
 (6) Date of Result as ordered by the district court
Nov. 9, 2001

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court United States Supreme Court

(2) Nature of proceeding Writ of Certiorari

(3) Grounds raised Same as previous motions

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Denied April 19, 2002 reh. den June 24, 2002

(6) Date of Result same

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(3) Third petition, etc. Yes ☒ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this matter, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for relief. You may raise any ground which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

~~Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.~~

Ground one
 the court to allow him to withdraw his guilty plea.
 The court refused. Stating that even though the
 petitioner could not be convicted and sentenced for
 "use". He could be convicted and sentence for "carry".
 Under the recent Supreme Court decision in Blakely.
 The court stated "the petitioner entered a guilty plea
 admitting the elements of second degree kidnapping
 and domestic violence and firearm allegations but
 no other relevant facts. This made clear that Blakely
 that could only be sentence to what he admitted,
 to in the guilty plea, and nothing else. Unless that
 something else was determined by a jury. The court
 cannot remedy a situation where a defendant pleads
 to conduct that constituted what he and the court
 believed to be elements in a offense. Then once those
 elements are redefined no longer fitting the plea of
 the defendant. One turn around and say that
 he is still subjected to be sentenced and convicted
 for a different element. The defendant does not re-
 ceive any procedural safeguards behind such a
 remedy, and such determination must be decided
 by a jury. Even though 924(c) acts as a statute
 in the 924 penalty section. It is still governed by
 the rules that require sixth amendment protections
 before it is punishment of 5 years to any other offense
 ran consecutively, can be imposed.

Ground Two

decision in *Blakely*. It had held in part II, "an accusation within [is] any particular fact which the law makes essential to the punishment is... no accusation within the requirements of the common law, and it is no accusation in reason." 15 Bishop Criminal Procedure § 87, p. 55 (2d ed. 1872). These principles have been acknowledged by the courts and treatises since the earliest days of graded sentencing, we compiled the relevant authorities in Appendix, see 530 U.S. at 476-483, 489, 490 n. 15, id. at 501-518 (Thomas J., concurring) and need not repeat them here. The statement makes clear that unlike the argument put forth by *Almendarez-Torres* and the standard of proof that might apply to sentencing determinations that bear significantly on the severity of the sentence. An issue that was not before the Court in that case. The petitioner states that his sentence was enforced beyond the maximum range to which he could receive under the guidelines pursuant to 4B1.1. Facts that the petitioner did not plead to and were not found by a jury in order for the petitioner to receive a sentence beyond maximum punishment allowed. The Supreme Court in Appendix. Stated "Both the certainty that procedural safeguards attach to any 'fact' of prior convictions and the reality that *Almendarez-Torres* did not challenge the accuracy of that fact in his case, mitigated the due process and sixth amendment concerns otherwise implicated in allowing a judge to determine a 'fact' increasing punishment beyond the maximum of the statutory range." Also unlike *Almendarez-Torres* the petitioner was sentenced under a guideline scheme.

statute. The petitioner indictment stated that the petitioner was in violation of 21 U.S.C. § 841 in three different incidents. Yet the indictment only stated the charged conduct and not the penalty. Thus the petitioner could only receive an offense level of 32 as opposed to 34. Also unlike the statute in *Almendarez Torres*, Once 4B1.1 is applied to a defendant. The defendant is then solely sentenced for career offender and not the underlying conviction for what the defendant pled guilty to or found guilty of. The petitioner receive 7 years over his sentence under the 922(g). A prima facie showing is simply a sufficient showing of possible merit to warrant a fuller exploration by the district court. The petitioner preserved these arguments in earlier petitions and he would receive a miscarriage of justice if not applied.

Ground three is a conflict of interest. This caused the previous attorney to fail to make challenges to the petitioner's jurisdiction. Because the petitioner's case was adopted by U.S. attorney's office by way of a program called F.A.S.T. from the state. See U.S. v. Berry, 164 F.3d 844. In that case. It stated that the main reason that the movant is sitting in federal court under federal prosecution. Is because the petitioner's prior criminal record could be used under career offender under U.S. Sentencing Guidelines §4 B1.1, and the other factor was drug amount. The petitioner during the three separate incidents stated in his indictment. Only possess a combined total of 12 plus grams. The previous attorney never challenged this before the court to see if in fact the petitioner met the amount criteria, and if he did. Then the second grams was element of his offense that should have been taken to a jury and proved beyond a reasonable doubt. Since the petitioner is sitting in prison for a sentence under career offender and not the underlying offense. See *In Re Williams* 3rd Cir No. 02-2560. This shows that the movant's priors were not just some mere enhancements, but an element of his offense under a sentencing scheme that is unconstitutional. see *Blakely*.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntary or with understanding of the nature of the charge and the consequences of the plea.
- (b) Convictions obtained by use of coerced confession.
- (c) Convictions obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Convictions obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Convictions obtained by a violation of the protection against self-incrimination.
- (f) Convictions obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Convictions obtained by the violation of the protection against double jeopardy.
- (h) Convictions obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: 924 (c) conviction was imposed in violation of the movant's 6 and 5 amendment right.

Supporting FACTS (tell your story briefly without citing cases or law): The District Court accepted a guilty plea from the petitioner for which the petitioner admitted to the standard of "use" defined by the Courts and Prosecutor at the time. The petitioner after the Supreme Court ruling in *Barley*, ask

B. Ground two: Petitioner received enhancements of his sentence in violation of his 6th amendment.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner has stated numerous times in every pro-se petition filed to this court. That the maximum sentence that he could receive for the actual guilty plea was 120 to a 150 months in offense level 26. In the recent Supreme Court

C. Ground three: The petitioner's Counsel appointed by the Courts were ineffective.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner stated to the court that he was denied of right of appeal because his attorney filed an Anders brief stating that the petitioner had no meritorious issues and his previous counsel had sexual relations with the petitioner's wife which was and

D. Ground four: _____

Supporting FACTS (tell your short briefly without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____
- _____
- _____
- _____

14. Do you have any petition or appeal now pending in any court as to the judgement under attack?
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgement attacked herein:

(a) At preliminary hearing _____

Quentia Brooks

(b) At arraignment and plea _____

Same

(c) At trial _____

Same

(d) At sentencing _____

Christopher Warren

(e) On appeal _____

Same

(f) In any post-conviction proceeding pro - per

(g) On appeal from any adverse ruling in a post-conviction proceeding pro - se

6. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

Yes ☒ No ☐

7. Do you have any future sentences to serve after you complete the sentence imposed by the judgement under attack?

Yes ☒ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future:

Pennsylvania Commonwealth Parole Violation
24 months

(b) Give date and length of the above sentence: 24 months

(c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☒ No ☐

herefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Derrick Williams
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on:

3/14/04
(date)

Derrick Williams
Signature of Movant

04 cv 3457

**MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

<div style="font-size: 1.2em; font-family: cursive;">United States District Court</div>		District <div style="font-size: 1.2em; font-family: cursive;">Eastern District of Pennsylvania</div>
Name of Movant <div style="font-size: 1.2em; font-family: cursive;">Derrick Williams</div>	Prisoner's No. <div style="font-size: 1.2em; font-family: cursive;">48426-046</div>	Docket No.
Place of Confinement <div style="font-size: 1.2em; font-family: cursive;">U.S.P Leavenworth, P.O. Box 1000, Leavenworth, KS, 66648</div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 40%;"> UNITED STATES OF AMERICA </div> <div style="width: 10%; text-align: center;"> V </div> <div style="width: 45%;"> <div style="font-size: 1.2em; font-family: cursive;">Derrick Williams AKA Derrick Everett</div> <div style="font-size: 0.8em;">(Include name upon which convicted)</div> <div style="font-size: 0.8em;">(Full name of movant)</div> </div> </div>		

MOTION

1. Name and location of court which entered the judgment of conviction under attack United States District Court for the Eastern District of Pennsylvania
2. Date of judgement of conviction Dec. 6, 1996
3. Length of sentence 22 1/2
4. Nature of offense involved (all counts) 21 U.S.C. § 841, 18 U.S.C. § 922(g) and 18 U.S.C. § 924(c)
5. What was your plea? (Check one)

(a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐
6. Kind of trial: (Check one)

(a) Jury ☐
 (b) Judge only ☒
7. Did you testify at trial?
 Yes ☒ No ☐
8. Did you appeal from the judgment of conviction?
 Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court Third Circuit Court of Appeal
 (b) Result Anders Buel was granted filed by attorney and the petition
 (c) Date of Result conviction was affirmed June 11, 1998

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgement in any federal court?
 Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court United States District Court for Eastern District of Pennsylvania
 (2) Nature of proceedings § 2255

(3) Grounds raised of ineffective assistance of counsel, selective prosecution, sixth and fifth amendment violation do to the petitioners process, constitutionality of guidelines and Commerce (jurisdiction of court)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Court rejected non Apprendi claims as time barred, and rejected most Apprendi claims on its merits
 (6) Date of result Sept 19, 2005

(b) As to any second petition, application or motion, give the same information:

- (1) Name of Court Third Circuit Court of Appeals
 (2) Nature of proceeding Certificate of Appealability

(3) Grounds raised Denial of petitioner's § 2255 motion as time barred, and error on the part of the District Court in miscalculating the date that petitioner filed his § 2255, which was timely.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Denied for failure to make a substantial showing
as ordered by the District Court
 (6) Date of Result Nov. 4, 2001

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court United States Supreme Court

(2) Nature of proceeding Writ of Certiorari

(3) Grounds raised Same as previous motions

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Denied April 19, 2002 reh. den June 24, 2002

(6) Date of Result Same

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(3) Third petition, etc. Yes ☒ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this matter, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for relief. You may raise any ground which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

~~Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.~~

Ground one

The court to allow him to withdraw his guilty plea. The court refused. Stating that even though the petitioner could not be convicted and sentenced for "use". He could be convicted and sentence for "carry". Under the recent Supreme Court decision in Blakely. The court stated "the petitioner entered a guilty plea admitting the elements of second degree kidnapping and domestic violence and firearm allegations but no other relevant facts. This made clear that Blakely that could only be sentence to what he admitted, to in the guilty plea, and nothing else. Unless that something else was determined by a jury. The court cannot remedy a situation where a defendant pleads to conduct that constituted what he and the court believed to be elements in a offense. Then once those elements are redefined no longer fitting the plea of the defendant. Then turn around and say that he is still subjected to be sentenced and convicted for a different element. The defendant does not receive any procedural safeguards behind such a remedy, and such determination must be decided by a jury. Even though 924(c) acts as a statute in the 924 penalty section. It is still governed by the rules that require sixth amendment protections before it is punishment of 5 years to any other offense ran consecutively, can be imposed.

Ground Two

decision in *Blakely*. It had held in part II, "an accusation within looks any particular fact which the law makes essential to the punishment is... no accusation within the requirements of the common law, and it is no accusation in reason." 15 Bishop Criminal Procedure § 87, p. 55 (2d ed. 1872). These principles have been acknowledged by the courts and treatises since the earliest days of graded sentencing, we compiled the relevant authorities in Appendi, see 530 U.S. at 476-483, 489, 490 n. 15, vol. at 501-518 (Thomas J., concurring) and need not repeat them here. The statement makes clear that unlike the argument put forth by Almendarez-Torres and the standard of proof that might apply to sentencing determinations that bear significantly on the severity of the sentence. An issue that was not before the Court in that case. The petitioner states that his sentence was enforced beyond the maximum range to which he could receive under the guidelines pursuant to 4B1.1. Facts that the petitioner did not plead to and were not found by a jury in order for the petitioner to receive a sentence beyond maximum punishment allowed. The Supreme Court in Appendi. Stated "Both the certainty that procedural safeguards attach to any 'fact' of prior convictions and the reality that Almendarez-Torres did not challenge the accuracy of that fact in his case, mitigated the due process and sixth amendment concerns otherwise implicated in allowing a judge to determine a 'fact' increasing punishment beyond the maximum of the statutory range." Also unlike Almendarez-Torres there was no jury trial under a guideline provision

statute. The petitioner indictment stated that the petitioner was in violation of 21 U.S.C. § 841 in three different incidents. Yet the indictment only stated the charges, conduct and not the penalty. Thus the petitioner could only receive an offense level of 32 as opposed to 34. Also unlike the statute in *Almendarez Torres* Once 4B1.1 is applied to a defendant. The defendant is then solely sentenced for career offender and not the underlying conviction for what the defendant pled guilty to or found guilty of. The petitioner receive 7 years over his sentence under the 922(g). A prima facie showing is simply a sufficient showing of possible merit to warrant a fuller exploration by the district court. The petitioner preserved these arguments in earlier petitions and he would receive a miscarriage of justice if not applied.

Ground three is a conflict of interest. This caused the previous attorney to fail to make challenges to the petitioner's jurisdiction. Because the petitioner's case was adopted by U.S. attorney's office by way of a program called F.A.S.T. from the state. See U.S. v. Berry, 164 F.3d 844. In that case, it stated that the main reason that the movant is sitting in federal court under federal prosecution is because the petitioner's prior criminal record could be used under career offender under U.S. Sentencing Guidelines § 4B1.1, and the other factor was drug amount. The petitioner during the three separate incidents stated on his indictment, only possess a combined total of 12 plus grams. The previous attorney never challenged this before the court to see if in fact the petitioner met the amount criteria, and if he did. Then the second grams was element of his offense that should have been taken to a jury and proved beyond a reasonable doubt. Since the petitioner is sitting in prison for a sentence under career offender and not the underlying offense. See In re Williams 3rd Cir No. 02-2560. This shows that the movant's priors were not just some mere enhancements, but an element of his offense under a sentencing scheme that is unconstitutional. see Blakely.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntary or with understanding of the nature of the charge and the consequences of the plea.
- (b) Convictions obtained by use of coerced confession.
- (c) Convictions obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Convictions obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Convictions obtained by a violation of the protection against self-incrimination.
- (f) Convictions obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Convictions obtained by the violation of the protection against double jeopardy.
- (h) Convictions obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: 924 (c) conviction was imposed in violation of the movant's 6 and 5 amendment right.

Supporting FACTS (tell your story briefly without citing cases or law): The District Court accepted a guilty plea from the petitioner in which the petitioner admitted to the standard of "use" defined by the courts and prosecutor at the time. The petitioner after the Supreme Court ruling in *Barley* ask

B. Ground two: Petitioner received enhancements of his sentence in violation of his 6th amendment.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner has stated numerous times in every pro-se petition filed to this court. That the maximum sentence that he could receive for the actual guilty plea was 120 to a 150 months in offense level 20. In the recent Supreme Court

C. Ground three: The petitioner's Counsel appointed by the Courts were ineffective.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner stated to the court that he was deprived of right of appeal because his attorney filed a Anders brief stating that the petitioner had no merit issues and his previous counsel had sexual relations with the petitioner's wife which was and

D. Ground four: _____

Supporting FACTS (tell your short briefly without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____
- _____
- _____
- _____

14. Do you have any petition or appeal now pending in any court as to the judgement under attack?
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgement attacked herein:

(a) At preliminary hearing _____

Quentin Brooks

(b) At arraignment and plea _____

Same

(c) At trial _____

Same

(d) At sentencing _____

Christopher Warren

(e) On appeal _____

Same

(f) In any post-conviction proceeding

Pro - Pe

(g) On appeal from any adverse ruling in a post-conviction proceeding

Pro - Pe

6. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

Yes ☒

No ☐

7. Do you have any future sentences to serve after you complete the sentence imposed by the judgement under attack?

Yes ☒

No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future:

Pennsylvania Commonwealth Parole violation
24 months

(b) Give date and length of the above sentence:

24 months

(c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☒

No ☐

Therefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Derrick Williams
Signature of Attorney (if any)

Declare under penalty of perjury that the foregoing is true and correct. Executed on:

3/14/04
(date)

Derrick Williams
Signature of Movant

**MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

<div style="font-size: 1.2em; font-family: cursive;">United States District Court</div>		District <div style="font-size: 1.2em; font-family: cursive;">Eastern District of Pennsylvania</div>
Name of Movant <div style="font-size: 1.2em; font-family: cursive;">Derrick Williams</div>	Prisoner's No. <div style="font-size: 1.2em; font-family: cursive;">48426-046</div>	Docket No.
Place of Confinement <div style="font-size: 1.2em; font-family: cursive;">U.S.P Leavenworth, P.O. Box 1000, Leavenworth, KS, 66648</div>		
UNITED STATES OF AMERICA		(Include name upon which convicted) <div style="font-size: 1.2em; font-family: cursive;">Derrick Williams AKA Derrick Everett</div>
		(Full name of movant)

MOTION

1. Name and location of court which entered the judgment of conviction under attack United States District Court for the Court Eastern Pennsylvania
2. Date of judgement of conviction Dec. 6, 1996
3. Length of sentence 22 1/2
4. Nature of offense involved (all counts) 21 U.S.C. § 841, 18 U.S.C. § 922(g) and 18 U.S.C. § 924(c)
5. What was your plea? (Check one)

(a) Not guilty	<input type="checkbox"/>
(b) Guilty	<input checked="" type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>
6. Kind of trial: (Check one)

(a) Jury	<input type="checkbox"/>
(b) Judge only	<input checked="" type="checkbox"/>
7. Did you testify at trial?
 Yes ☒ No ☐
8. Did you appeal from the judgment of conviction?
 Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court Third Circuit Court of Appeal
 (b) Result Andrew Buehl was granted filed by attorney and the petitioner
 (c) Date of Result conviction was affirmed June 11, 1998

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgement in any federal court?
 Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court United States District Court for Eastern District of Pennsylvania
 (2) Nature of proceedings § 2255

(3) Grounds raised of ineffective assistance of counsel, selective prosecution, sixth and fifth amendment violation do to the petitioner's prior constitutionality of guidelines and Commerce (jurisdiction of court)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Court rejected non Apprendi claims as time barred, and rejected motion Apprendi claim on its merits

(6) Date of result Sept 19, 2000

(b) As to any second petition, application or motion, give the same information:

- (1) Name of Court Third Circuit Court of Appeals
 (2) Nature of proceeding Certificate of Appealability

(3) Grounds raised Denial of petitioner's § 2255 motion as time barred, and error on the part of the District Court in miscalculating the date that petitioner filed his § 2255 which was timely.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result

(6) Date of Result

Denied for failure to make a substantial showing
as ordered by the District Court
Nov. 9, 2001

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court

United States Supreme Court

(2) Nature of proceeding

Writ of Certiorari

(3) Grounds raised

Same as previous motions

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐No ☒

(5) Result

Denied April 19, 2002 reh. den June 24, 2002

(6) Date of Result

same

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes ☒No ☐

(2) Second petition, etc.

Yes ☒No ☐

(3) Third petition, etc.

Yes ☒No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12.

State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this matter, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for relief. You may raise any ground which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

Ground one

The court to allow him to withdraw his guilty plea. The court refused. Stating that even though the petitioner could not be convicted and sentenced for "use". He could be convicted and sentence for "carry". Under the recent Supreme Court decision in *Blakely*. The court stated "the petitioner entered a guilty plea admitting the elements of second degree kidnapping and domestic violence, and firearm allegations but no other relevant facts. This made clear that *Blakely* that could only be sentence to what he admitted to in the guilty plea, and nothing else. Unless that something else was determined by a jury. The court cannot remedy a situation where a defendant pleads to conduct that constituted what he and the court believed to be elements in a offense. Then once those elements are redefined no longer fitting the plea of the defendant. Then turn around and say that he is still subjected to be sentenced and convicted for a different element. The defendant does not receive any procedural safeguards behind such a remedy, and such determination must be decided by a jury. Even though 924(c) acts as a statute and the 924 penalty section. It is still governed by the rules that require sixth amendment protections before it is punishment of 5 years to any other offense ran consecutively, can be imposed.

Ground Two

decision in *Blakely*. It had held in part II, "an accusation within lacks any particular fact which the law makes essential to the punishment is... no accusation within the requirements of the common law, and it is no accusation in reason." 15 Bishop Criminal Procedure § 87, p. 55 (2d ed. 1872) These principals have been acknowledged by the courts and treatises since the earliest days of graded sentencing, we compiled the relevant authorities in Appendi, see 530 U.S. at 476-483, 489, 490 n. 15, id. at 501-518 (Thomas J., concurring) and need not repeat them here. The statement makes clear that unlike the argument put forth by Almandarez-Torres and the standard of proof that might apply to sentencing determinations that bear significantly on the severity of the sentence. An issue that was not before the Court in that case. The petitioner states that his sentence was enhanced beyond the maximum range to which he could receive under the guidelines pursuant to 4B1.1. Facts that the petitioner did not plead to and were not found by a jury in order for the petitioner to receive a sentence beyond maximum punishment allowed. The Supreme Court in Appendi. Stated "Both the certainty that procedural safeguards attach to any 'fact' of prior convictions and the reality that Almandarez-Torres did not challenge the accuracy of that fact in his case, mitigated the due process and sixth amendment concerns otherwise implicated in allowing a judge to determine a 'fact' increasing punishment beyond the maximum of the statutory range." Also unlike Almandarez-Torres the petitioner was enhanced under a guideline pcrp

statute. The petitioner indictment stated that the petitioner was in violation of 21 U.S.C. § 841 in three different incidents. Yet the indictment only stated the charged conduct and not the penalty. Thus the petitioner could only receive an offense level of 32 as opposed to 34. Also unlike the statute in *Almendarez Torres* Once 4B1.1 is applied to a defendant. The defendant is then solely sentenced for career offender and not the underlying conviction for what the defendant pled guilty to or found guilty of. The petitioner receive 7 years over no sentence under the 922(g). A prima facie showing is simply a sufficient showing of possible merit to warrant a fuller exploration by the district court. The petitioner preserved these arguments in earlier petitions and he would receive a miscarriage of justice if not applied.

Ground three is a conflict of interest. This caused the previous attorney to fail to make challenges to the petitioner's jurisdiction. Because the petitioner's case was adopted by U.S. attorney's office by way of a program called F.A.S.T. from the state. See U.S. v. Berry, 164 F.3d 844. In that case. It stated that the main reason that the movant is sitting in federal court under federal prosecution. Is because the petitioner's prior criminal record could be used under career offender under U.S. Sentencing Guidelines §4 B1.1, and the other factor was drug amount. The petitioner during the three separate incidents stated by his indictment. Only possess a combined total of 12. plus grams. The previous attorney never challenged this before the court to see if in fact the petitioner met the amount criteria, and if he did. Then the second criteria was element of his offense that should have been taken to a jury and proved beyond a reasonable doubt. Since the petitioner is sitting in prison for a sentence under career offender and not the underlying offense. See *In Re Williams* 3rd Cir No. 02-2540. This shows that the movant's priors were not just some mere enhancements, but an element of his offense under a sentencing scheme that is unconstitutional. see *Blakely*.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntary or with understanding of the nature of the charge and the consequences of the plea.
- (b) Convictions obtained by use of coerced confession.
- (c) Convictions obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Convictions obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Convictions obtained by a violation of the protection against self-incrimination.
- (f) Convictions obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Convictions obtained by the violation of the protection against double jeopardy.
- (h) Convictions obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: 924 (c) conviction was imposed in violation of the movant's 6 and 5 amendment right.

Supporting FACTS (tell your story briefly without citing cases or law): The District Court accepted a guilty plea from the petitioner. In which the petitioner admitted to the standard of "use" defined by the courts and prosecutor at the time. The petitioner after the Supreme Court ruling in *Barber v. Ash*.

B. Ground two: Petitioner received enhancements of his sentence in violation of his 6th amendment.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner has stated numerous times in every pro-se petition filed to the court. That the maximum sentence that he could receive for the actual guilty plea was 120 to 150 months in offense level 26. In the recent Supreme Court.

C. Ground three: The petitioner's Counsel appointed by the courts were ineffective.

Supporting FACTS (tell your story briefly without citing cases or law): The petitioner stated to the court that he was denied of right of appeal because his attorney filed a *pro se* brief. Stating that the petitioner had no merit on his issues, and his previous counsel had actual relations with the petitioner's wife which was and

D. Ground four: _____

Supporting FACTS (tell your short briefly without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____
- _____
- _____
- _____

14. Do you have any petition or appeal now pending in any court as to the judgement under attack?
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgement attacked herein:

(a) At preliminary hearing _____

Quentin Brooks

(b) At arraignment and plea _____

Same

(c) At trial _____

Same

(d) At sentencing _____

Christopher Warren

(e) On appeal _____

Same

(f) In any post-conviction proceeding

Pro - Plea

(g) On appeal from any adverse ruling in a post-conviction proceeding

Pro - Re

6. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

Yes ☒

No ☐

7. Do you have any future sentences to serve after you complete the sentence imposed by the judgement under attack?

Yes ☒

No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future:

Pennsylvania Commonwealth Parole violation
24 months

(b) Give date and length of the above sentence:

24 months

(c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☒

No ☐

Therefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Derrick Williams

Signature of Attorney (if any)

Declare under penalty of perjury that the foregoing is true and correct. Executed on:

3/14/04
(date)

Derrick Williams

Signature of Movant

WILLIAMS
WILLIAMS

DERRICK
DERRICK

99CV2756
98CV172

USA V. WILLIAMS
USA VS WILLIAMS

6/1/1999	WALDMAN	2255	94CR462	48426-066 / AKA DERRICK EVERETT
1/14/1998	KATZ	2255	91-570-20	

UNITED STATES DISTRICT COURT

04cv3457

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for purpose of assignment to appropriate calendar.

Address of Plaintiff: P.O. Box 1000 Leavenworth, KS 66048

Address of Defendant: _____

Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

88888

Does this case involve multidistrict litigation possibilities?

RELATED CASE IF ANY

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when

1. Is this case related to property in one year previously terminated action?
2. Does this case involve the same parties as a prior suit pending or within one year?
3. Does this case involve the validity of any earlier numbered case pending in this court?

Originally it was Judge Waldman's case. For obvious reasons it was re-assigned.

The old crim. # was

94CR 462

CIVIL: (Place ☐ in ONE CATEGORY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine & Other Contracts
2. ☐ FELA
3. ☐ Jones Act—Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☒ Habeas Corpus 2255
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases (Please specify)

1. ☐ Assault, Defamation
2. ☐ Marine Personal Injury
3. ☐ Motor Vehicle Personal Injury
4. ☐ Other Personal Injury (Please specify)
5. ☐ Products Liability
6. ☐ Products Liability — Asbestos
7. ☐ All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

1. _____, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action exceed the sum of \$100,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: _____

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in except as noted above.

FILED JUL 19 2004

Gregg Swierkowski

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

U.S.A.

v.

Derrick Williams
aka DERRICK EVERETT

CIVIL ACTION

NO. 04-3457

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ☒
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ☐
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ☐
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ☐
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ☐
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ☐

FILED JUL 19 2004

Date

Meggy Swieczynski
DEPUTY CLERK

Attorney for

Telephone

FAX Number

E-Mail Address